

Court of Appeals, State of Michigan

ORDER

People of MI v Toby Jacquett Woods

Docket No. 353483

LC No. 19-270971-FH

Stephen L. Borrello
Presiding Judge

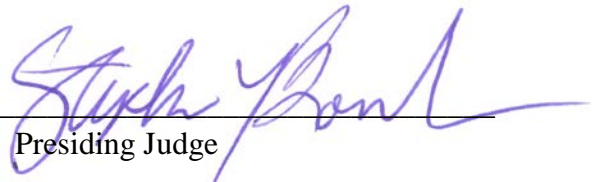
Amy Ronayne Krause

Brock A. Swartzle

Judges

The Court orders that the motion for immediate consideration is Granted.

The delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.


Presiding Judge

Ronayne Krause, J., would grant the application as to the scoring of OV 2 only and states: The trial court scored a potential work knife as 5 points on OV 2. For OV 2 to be scored at even 1 point it must be shown that "The offender possessed or used any other potentially lethal weapon." MCL 777.32(1)(e). Therefore this OV is dealing with potentially lethal weapons. The knife in defendant's possession was used to initially charge defendant with possessing a dangerous weapon, and that charge was dismissed after the preliminary examination. Therefore there was no probable cause given to the examining magistrate that it was a dangerous weapon. It was allegedly a carpet utility knife defendant used for his employment. I believe this matter deserves plenary review. Knife is not defined in the OV 2 guideline statute and clearly what defendant had in his possession did not meet the definition of a dangerous weapon or a potentially lethal weapon based on the dismissal at the preliminary examination. Scoring OV 2 at zero would change the guideline range to a minimum of 10 months and there was a Cobbs agreement that the trial court would sentence within the bottom 1/3 of the guidelines.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

May 19, 2020

Date


Chief Clerk